Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Building Momentum Against An Expanded Duty To Warn

Law360, New York (February 15, 2012, 1:16 PM ET) -- Two recent decisions by the California Supreme Court and the federal judge overseeing the asbestos multidistrict litigation (MDL) bolster the existing body of law limiting the tort liability of manufacturers to products that they actually manufactured. Capping a trend of recent favorable opinions from other states, these courts confirmed that manufacturers do not have tort liability for replacement parts, accessories or other products associated with the use of their products.

In a much anticipated opinion in O'Neil v. Crane Co., the California court rebuffed an attempt to impose liability on manufacturers of pumps and valves for a plaintiff's exposure to asbestos-containing insulation and gaskets — manufactured by other companies — which were subsequently used in conjunction with the defendants' products. — P.3d — (Cal. Jan. 12, 2012).

Similarly, in Conner v. Alfa Laval Inc., the Honorable Eduardo C. Robreno, while administering the consolidated federal asbestos products liability MDL, granted summary judgment under maritime law on nearly identical claims. — F. Supp. 2d — (E.D. Pa. Feb. 1, 2012)

These decisions are the latest in a string of decisions rejecting the theory that a manufacturer owes a duty to warn regarding the dangers associated with another manufacturer's product. Although these decisions arose in the context of asbestos exposure, they have potentially wide application to any other industries in which a manufacturer's product could be used in conjunction with other products.

Plaintiffs' Theory of Expanded Liability

Plaintiffs' theory of liability, that a manufacturer has a duty to warn as to the dangers associated with using another product with the manufacturer's product, is a response to the ever-shrinking pool of solvent defendants in asbestos-related litigation.

For example, in O'Neil, the plaintiff sought recovery under theories of strict liability and negligence for the development of mesothelioma caused by his exposure to asbestos-containing products during his service in the United States Navy.

Specifically, the plaintiff sued a pump manufacturer and valve manufacturer, alleging that third-party products, such as external insulation and other asbestos-containing parts, were added to the manufacturers' products post-sale. It was undisputed that the defendants did not produce these asbestos-containing products and that the plaintiff's exposure to asbestos resulted entirely from products manufactured by traditional asbestos-containing product manufacturers who were mostly bankrupt.

The plaintiff, however, sought to impose liability on the defendants based solely on the use of their products in conjunction with other asbestos-containing products.

In this context, the plaintiff argued that it was foreseeable to the defendants that the asbestos-containing parts used with their products would require replacement, and the repair and maintenance procedures to replace those parts would release harmful asbestos dust which would ultimately result in a plaintiff's development of mesothelioma. Thus, the plaintiff argued, because it was foreseeable, the defendants owed the plaintiff a duty to warn about the potential health consequences of breathing asbestos dust.

The Growing Trend Rejecting Plaintiffs' Theory

The California Supreme Court unanimously rejected the plaintiff's argument and held that a manufacturer does not have a duty to warn unless the manufacturer's own product contributed to the harm or participated in creating a harmful combined use of the products. The court explained that product liability law requires proof that the plaintiff suffered an injury caused by a defect in the defendant's product.

In this case, it was undisputed that the defendants did not manufacture or supply the asbestos-containing products to which plaintiff was exposed. Any asbestos-containing gaskets and insulation which were originally supplied with the products would have been replaced with replacement parts due to the frequency of repairs and maintenance by the time the plaintiff came in contact with the defendants' products.

The court explained that even if it is foreseeable that two products will be used together, California law does not impose a duty to warn of hazards arising entirely from another manufacturer's product. Perhaps not realizing that such suits have already been filed in California, the court reasoned that to find such a duty to warn would lead to the absurd result that "manufacturers of the saws used to cut insulation would become the next targets of asbestos lawsuits."

The court held that liability may be imposed only when the intended use of a manufacturer's product with another product contributes to the creation of the hazard.

The court noted that recognizing an expanded duty to warn "would represent an unprecedented expansion" of liability. Such an expansion does not comport with traditional policy goals, which seek to impose liability on the manufacturers who actually derive economic benefit from the sale of the products that injure the plaintiffs.

Generally, liability is assigned to a party in the chain of distribution of a product because that party is in the best position to absorb the cost of liability into the cost of production of the products.

Moreover, if such an extended duty to warn were imposed, a manufacturer would be forced to investigate all potential risks and hazards which could foreseeably result from the use of a product with another manufacturer's product so it could warn consumers of all risks. The court characterized this as an excessive and unrealistic burden on manufacturers.

Similarly, Robreno relied on the growing body of authority limiting these types of claims under maritime law. In Conner, the court applied maritime law to resolve plaintiffs' exposure to asbestos-containing products while serving aboard a ship in the Navy.

In granting summary judgment in favor of the manufacturer defendants, Robreno noted that the plaintiffs failed to raise a genuine issue of material fact as to whether the defendants could be liable for harm resulting from their products. Importantly, the plaintiffs failed to cite any evidence demonstrating that the defendants manufactured or supplied the asbestos-containing products which released respirable asbestos fibers that the plaintiffs actually breathed.

These two decisions join courts across the country that have rejected an expanded duty to warn and preserved the traditional tort principle that a manufacturer does not owe a duty to warn of dangers or defects associated with another manufacturer's product.

See, e.g., Braaten v. Saberhagen Holdings, 198 F.3d 493 (Wash. 2008); Simonetta v. Viad Corp., 197 P.3d 127 (Wash. 2008); Lindstrom v. A-C Prod. Liab. Trust, 424 F.3d 488 (6th Cir. 2005); Ford Motor Co. v. Wood, 703 A.2d 1315 (Md. App. 1998); see also Baughman v. Gen. Motors. Corp., 780 F.2d 1131 (4th Cir. 1986); Rastelli v. Goodyear Tire & Rubber Co., 591 N.E.2d 222 (N.Y. 1992)

The Future of Plaintiffs' Attempts to Expand the Duty

These decisions, and those of other courts, leave the door open to a few potential scenarios in which a defendant might be held to owe a plaintiff a duty to warn.

First, in O'Neil, the court carefully noted that the plaintiff did not present any evidence that the defendant manufacturers ever supplied asbestos-containing replacement parts to the Navy. Implicitly, a manufacturer who supplied a product may be liable as an entity in the chain of distribution under traditional tort principles. Plaintiffs will likely scour manufacturers' historical records in discovery to uncover this type of evidence.

Similarly, plaintiffs did not present any evidence that the defendants' products required asbestos-containing parts to operate properly. Future plaintiffs may search for evidence that the manufacturer specified or advised the use of dangerous or defective products in conjunction with its own product.

Finally, plaintiffs can allege that a manufacturer owes a duty when that manufacturer's product, in combination with another product, contributes to the creation of the harm to the plaintiff.

For example, plaintiffs have sought recovery for injuries associated with breathing metallic dust on the theory that a manufacturer of a grinder should warn of the danger of breathing metallic dust. See, e.g., Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzger Co., 28 Cal. Rtpr.3d 744 (Cal. App. 2004).

Crucial to the Tellez-Cordova decision, which permitted the plaintiff's claim, was that the metallic dust was also released from the metal grinding wheel during the grinding process. Thus, the grinder itself contributed to the creation of a foreseeable harm — respirable metallic dust which the plaintiff breathed and subsequently contributed to his injury.

Such a scenario is factually distinct from the manufacturers of saws used to cut asbestos-containing insulation, as the California Supreme Court noted in O'Neil. As the O'Neil court explained, it is reasonable to expect a manufacturer to give warnings when "the defendant's product was intended to be used with another product for the very activity that created a hazardous situation."

Conclusion

Despite these recent decisions, and the growing trend toward rejecting an expanded duty to warn, future claims by plaintiffs will continue to test potential exceptions and novel theories.

Manufacturers must remain vigilant during discovery as plaintiffs seek to develop factual disputes as to whether manufacturers owed a duty to warn the plaintiff regarding hazards associated with the product in order to prevent summary judgment.

In some instances, a motion to dismiss may be appropriate when plaintiffs fail to allege exposure to a product actually manufactured by the defendant. Otherwise, manufacturers must carefully lay a factual record and rely on the growing trend of authority to prevail on a motion for summary judgment.

-- By Joseph W. Hovermill and Matthew R. Schroll, Miles & Stockbridge PC

Joseph Hovermill is a principal and chairman of the products liability and mass torts group in Miles & Stockbridge's Baltimore office. Matthew Schroll is an associate in the Baltimore office.

The opinions expressed are those of the authors and do not necessarily reflect the views of the firm, its clients, or Portfolio Media, publisher of Law360. This article is for general information purposes and is not intended to be and should not be taken as legal advice.